उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(29)

मामला क्रमांक CrA No 189 **सन्** 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(Jail custody)

Budh Ram, son of Somaru Ram, aged 25 years, resident of village Bhatpal, Alerpara, P.S. Barsoor, Distt. Dantewara, Chhattisgarh.

-Versus-

RESPONDENT:

State of Chhattisgarh, Through P.S. Barsoor, Distt. Dantewara, Chhattisgarh.

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

28-9-2007:-

Shri V.P. Gupta, Advocate for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

Sunil Kumar Sinha, J.

This appeal is directed against the judgment of conviction and order of sentence dated 10-1-2002 passed by the 4th Additional Sessions Judge, Jagdalpur, in S.T. No.142/2001, whereby the accused/appellant has been convicted under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

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The brief facts are that the deceased namely, Baldev was the father-in-law of accused/appellant Budh Ram. In the intervening night of 7th/8th January, 2001, the accused was present in the house of the deceased and two small children of the deceased namely, Ku. Rumal (PW-1) daughter of the deceased and Balram (PW-6) son of the deceased were also there.

The case of the prosecution is that at about 1.00 a.m. the accused came to the room where the deceased was sleeping and said to both his son and daughter to go from that place and thereafter with the help of a crowbar he attacked over the deceased, which resulted into his instantaneous death. The incident was witnessed by two eyewitnesses i.e. both the children of the deceased. After the incident, Ku. Rumal (PW-1) disclosed the story to Jaggu (PW-2), who is brother of the deceased and who was residing in a different house. After receiving the information, he went to the house of the deceased and saw the dead body. Thereafter, he along with Kotwar, Sarpanch and other villagers went to the house of Budh Ram. Budh Ram was not present in the house, but he was found in the village. He was caught and a Panchayat was convened. In the Panchayat, he admitted that after giving Sulphi (liquor) to the deceased, he had attacked over him by a crow bar. A report Ex.P/1 to this effect was lodged by Jaggu (PW-2). On the said report, the investigating officer left for the scene of occurrence, after giving notice Ex.P/13 to the Panchas, he prepared inquest on the body of the deceased vide Ex.P/12. After taking the accused/appellant into custody, he recorded his memorandum Ex.P/2 in which he made disclosure about crowbar. On the basis of such disclosure crowbar was seized at the instance of the

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accused/appellant under Ex.P/5. The dead body of the deceased was sent for postmortem examination to the MPHC, Barsoor under Ex.P/9. The postmortem examination was conducted by Dr. P.S. Komre (PW-7), who prepared his report Ex.P/6. Site plan was prepared under Ex.P/15. Another site plan was prepared by the SHO under Ex.P/18. The clothes of the deceased were seized under Ex.P/11. The blood stained and plain soil were seized under Ex.P/4. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P/16.

After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur (Bastar) from where it was received on transfer by the 4th Additional Sessions Judge, Jagdalpur, who conducted the trial and convicted and sentenced the accused/appellant as aforementioned.

The conviction and sentence of the appellant are based upon the testimony of two eyewitnesses namely, Ku. Rumal (PW-1) and Balram (PW-6).

Learned counsel for the appellant has not disputed homicidal death of the deceased namely, Baldev. Moreover, it comes in the evidence of Ku. Rumal (PW-1) and Balram (PW-6) that in the fateful night they had seen that their father namely, Baldev was assaulted by the appellant on his head with the help of a crowbar. They disclosed story to their uncle namely, Jaggu (PW-2), who lodged FIR. The evidence given by these two eyewitnesses as also Jaggu in relation to receiving injuries on the person of the deceased is supported by the medical evidence of Dr. P.S. Komre

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(PW-7), who prepared postmortem report Ex.P/6 in which he gave opinion that cause of death was due to massive haemorrhage as a result of injury on head. He has mentioned that injury was fatal in nature and nature of the death was homicidal. Therefore, in view of the above ocular evidence of Ku. Rumal (PW-1) and Balram (PW-6) and medical evidence of Dr. P.S. Komre, it is established that death of the deceased was homicidal in nature.

So far as involvement of the appellant is concerned, learned counsel for the appellant argued that evidence of both the eyewitnesses are unreliable. He stated that they are the child witnesses and they are son and daughter of the deceased, therefore, looking to their evidence, they should not be relied upon. His submission is that they themselves had gone out of the room, therefore, there is possibility that they may not have seen the actual occurrence committed on the said date.

To appreciate the argument advanced by learned counsel for the accused/appellant, we have perused evidence of these two eyewitnesses.

So far as question of reliability of child witness as also witness falling in close relation is concerned, the law is well settled. If the version of the eyewitness who falls in close relation with the deceased appears to be true and reliable, the witness will not be disbelieved merely on the ground that he or she happens to be close relative of the deceased or the prosecution, as the case may be. However, the guideline is that his/her evidence has to be scrutinized with great care and caution. On the same line, evidence of child witness has also to be scrutinized with great care and caution. If such evidence of witness who happens to be child witness

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inspire confidence of the Court, then conviction can well be based upon evidence of such witness.

If we look into evidence of Ku. Rumal (PW-1), she has stated that she knows the accused/appellant who is her brother-in-law. The deceased was her father. She has clearly deposed in para-1 of her evidence that her father was attacked by the accused/appellant with the help of a crowbar. In para-2 of her evidence, she has stated that in the fateful night they all were sleeping in their house along with the appellant and the deceased. She was sleeping along with her father Baldev. The appellant said her and her brother to go away from that place. He said that they should not remain here and they should go away, on which they went towards the kitchen garden and from the kitchen garden she saw that the appellant brought a crowbar and he attacked on the head of her father by the said crowbar. He had attacked on his head for two times. She has specifically stated that from the place where she was standing the place of the incident, where the accused attacked her father, was clearly visible. She has further deposed that after causing injuries to her father the accused ran away from the place of occurrence. She has further deposed that at that time Balram (PW-6) was also with her and he has also seen the occurrence. She has further deposed that thereafter she went to the room where her father was lying. She saw injuries on the head of her father. Blood was coming out from the injuries. Thereafter, she went to her aunt namely, Ramvati and uncle Sukhdev and told the story to them. They also came to their house, but by that time her father has died. Vide para-4, she has deposed that thereafter the appellant was

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caught by the villagers and he was asked by them, on which he told the villagers that he had killed her father with a crowbar.

Balram (PW-6) has also deposed in the same fashion. He has deposed that the appellant had attacked his father with a crowbar. In para-2, he has deposed that in the fateful night they all were sleeping in the house. The accused/appellant was also present there. In the night, the accused/appellant said to him and his sister that they should go from the room, on which they went from the room towards Badi. They saw from Badi that the accused/appellant attacked over head of their father. He has deposed that he had seen injuries on the right side of the head of his father. He has further deposed that after that he and his sister both went to the house of their uncle Jaggu and Sukhdev and narrated the story to them. On enquiry, they had visited their house and by that time his father has died. In para-4, he has deposed that a Panchayat was convened in the village and the accused was also brought in the Panchayat. He was asked, on which, he admitted that he has attacked his father with the help of a crowbar.

Though, lengthy cross-examinations of these two eyewitnesses have been done, but defence has not been able to elicit any such circumstance which may discredit testimonies of these two eyewitnesses. They have denied suggestion given by the defence that in fact, they had not seen occurrence and when they entered the room, they saw that body was lying there. In cross-examination of Balram (PW-6) a question about their distance has been asked on which he has deposed that he was present at a distance of about 10 steps from the place of occurrence. This

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suggests that he and his sister both had seen the occurrence from a distance of about 10 steps.

Even otherwise also, if we compare evidence of these two witnesses, there is no material contradiction in their evidence and almost similar type of evidence has been given by them. Therefore, this is a case in which two eyewitnesses have corroborated evidence of each other and there is no reason to disbelieve testimony of these two eyewitnesses.

Apart from the above ocular evidence, second set of evidence is extra judicial confession. The case of the prosecution is that on disclosure made by these two eyewitnesses the appellant was caught by the villagers and he was brought before them. In presence of many villagers he made extra judicial confession that he has committed murder of the deceased. The factum of extra judicial confession is established on the evidence of Ku. Rumal (PW-1) and Balram (PW-6) and it is further corroborated by the evidence of PW-2 Jaggu, PW-3 Sukhdev and PW-4 Chetan.

PW-2 Jaggu has deposed in para-2 that a Panchayat was convened in the village. Kotwar, Sarpanch and many other villagers were present in the Panchayat. The villagers had asked the accused/appellant in the Panchayat on which he made extra judicial confession about assaulting the deceased with a crowbar. PW-3 Sukhdev in para-2 of his evidence has also deposed in similar fashion. PW-4 Chetan has also deposed in para-3 that he was also present in the Panchayat. The accused was also present in the Panchayat. On asking from the accused he had admitted that he assaulted the deceased with the help of a crowbar. Almost all the witnesses have stated that after such disclosure

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	made by Ku. Rumal (PW-1) and Balram (PW-6), after convening the Panchayat and after extra judicial confession made by the accused, first information report was lodged. If we look into the contents of the FIR lodged by Jaggu (PW-2), it would appear that all these facts are mentioned therein. It has been mentioned in the FIR that fact regarding commission of murder was disclosed by one of the eyewitnesses namely Ku. Rumal (PW-1). It has also been mentioned in the FIR that in the village Panchayat, the accused has made extra judicial confession before the villagers. Therefore, apart from evidence of these eyewitnesses which we have held to be reliable, there is an additional evidence of extra judicial confession made by the accused in the village Panchayat. In the light of above discussion, argument advanced by learned counsel for the accused/appellant does not appear to be acceptable. The versions of two child witnesses namely, Ku. Rumal (PW-1) and Balram (PW-6) are fully reliable and dependable. Apart from that, there is extra judicial confession of the accused/appellant. The conviction based upon such evidence cannot be said to be illegal or unsustainable. The conviction is based upon cogent, clinching and reliable evidence available on record, which does not require any interference by this Court. In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge** **Sd/-** **Sunil Kumar Sinha** **Judge**	
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